

## **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOHN JOSEPH BENGIS, an individual,

Plaintiff,

-against-

04-cv-5354  
(SJF)(WDW)

**OPINION & ORDER**

WORLD WIDE PACKAGING, INC.,  
a corporation, QVC, INC., a corporation,  
and JOHNSON MARKETING GROUP,  
INC., a corporation,

Defendants.

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FEUERSTEIN, J.

I. Introduction

Plaintiff John Joseph Bengis ("Bengis" or "Plaintiff") commenced this action on December 9, 2004, asserting, inter alia, patent infringement claims against defendants World Wide Packaging, Inc. ("WWP"), QVC, Inc. ("QVC") and Johnson Marketing Group, Inc. ("Johnson" and together with WWP and QVC, "Defendants"). On May 5, 2005, I denied Defendants' motion for a more definite statement. Defendants now move for partial summary judgment pursuant to Fed. R. Civ. P. 56. For the reasons set forth below, Defendants' motion is granted.

II. Background

A. The '179 Patent

Plaintiff is the owner of United States Letters Patent No. 6,450,179 B2, entitled "Cosmetic Container With Interchangeable Attachments" (the "'179 Patent"). (Cmplt. ¶ 8). The 'Background of the Invention' section of the '179 Patent offers the following summary of the

patent:

The present invention is generally related to the field of cosmetic containers. In particular, the present invention relates to a lipstick dispenser adapted to accept a variety of interchangeable attachments, such as, for example, a receptacle for a second cosmetic product, an appropriate cosmetic applicator, a cosmetic pencil sharpener or a receptacle for an aqueous bubble solution and bubble blowing device.

Conventionally, certain cosmetic products such as lipstick are held alone in a metal or plastic tube provided with a mechanism to raise or lower the lipstick out of one end of the tube, usually for direct application. While it is generally known to provide a lipstick dispenser in combination with a container or dispenser of another product, the present invention has been developed to improve over such prior art containers by providing a lipstick dispenser that may mate with one of a variety of interchangeable attachments.

(‘179 Patent, col. 1, ll. 11-27). Although the ‘179 Patent contains thirty-three (33) claims, only four of these claims [one (1), sixteen (16), nineteen (19) and twenty-one (21)] are independent.<sup>1</sup>

The three (3) claims disputed in the instant motion<sup>2</sup> are:

1. A multi-purpose container, comprising a compartment for housing a first product, said compartment including a dispenser for dispensing said first product and an open base, said open base including an interior surface having a plurality of ribs projecting therefrom, a cap having an outer surface including a plurality of corresponding splines for engaging said ribs to releasably couple said cap to said compartment and resist rotational movement of said cap within said base, and a receptacle for holding a second product, said receptacle having an open neck adapted to releasably engage said cap . . . .

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<sup>1</sup> The remainder of the claims are ‘dependent’ claims which refer to and incorporate the independent claims. “[D]ependent claims cannot be found infringed unless the claims from which they depend have been found to have been infringed.” *Wolverine World Wide v. Nike, Inc.*, 38 F.3d 1192, 1199 (Fed. Cir. 1994) (quoting *Wahpeton Canvas Co. v. Frontier, Inc.*, 870 F.2d 1546, 1553 (Fed. Cir. 1989)); *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 1383 (Fed. Cir. 2000); *see also* 35 U.S.C. § 112, ¶ 4. Because I find the independent claims are not infringed, the dependent claims are necessarily also not infringed.

<sup>2</sup> Plaintiff has not opposed Defendants’ motion for summary judgment of noninfringement of claim sixteen (16), which provides for a product containing, *inter alia*, “a sharpener . . . .” (‘179 Patent, col. 7, l. 39). Because Plaintiff has failed to offer any evidence indicating that the accused product contains a ‘sharpener,’ there exists no genuine issue of material fact, and Plaintiff’s claim arising out of Claim 16 is hereby dismissed.

19. A multi-purpose cosmetic container, comprising a compartment for housing a first cosmetic product, said compartment including a dispenser for dispensing said first cosmetic product and an open base, a cap having an outer surface, said open base including an interior surface, said outer surface of said cap and said interior surface of said base shaped to permit removable coupling of said cap with said compartment while resisting rotational movement of said cap within said base; a receptacle for holding a second product, said receptacle having an open neck adapted to releasably engage said cap, and a second product applicator supported on at least one of said cap and said open neck . . . .

21. A multi-purpose container, comprising a compartment for housing a first product, said compartment including a dispenser for dispensing said first product and an open base, said open base including an interior surface have a preselected shape, a cap having an outer surface having a shape corresponding to said preselected shape of said interior surface of said open base for releasably coupling said cap to said compartment while resisting rotational movement of said cap within said base, and a receptacle for holding a second product, said receptacle having an open neck adapted to releasably engage said cap . . . .

(‘179 Patent, col. 6, ll. 54-64, col. 7, ll. 47-51, col. 8, ll. 1-7, 10-20); see also Def. Mem. in Supp. at 9; Pl. Mem. in Opp. at 2) (addressing only Claims 1, 19 and 21).

#### B. The Accused Products

Plaintiff alleges in his complaint that Defendants manufacture and sell a series of cosmetic containers, known as “Mojave Magic Total Endurance Lip Color Duo products,” (Cmplt. ¶¶ 10-14, 18), that infringe on the ‘179 Patent.<sup>3</sup> According to the Complaint, the Mojave Magic products are “cosmetic container[s] with interchangeable attachments . . . [that are manufactured and sold] in at least four variations.” (*Id.* ¶ 10). Plaintiff claims that “every element of claims 1, 2, 3, 4, 5, 6, 7, 8, 19, 20, 21, 22, 23, 24, 25, and 26 of the ‘179 [P]atent is

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<sup>3</sup> Plaintiff’s complaint appears to allege that Defendants manufacture and market two (2) products that infringe on the ‘179 Patent: the Mojave Magic products and “Product Item Number L/L-0070.” (Cmplt. ¶ 18). Plaintiff also refers to a Revlon product in his opposition papers. While it is not clear whether Product Item Number L/L-0070 is the Revlon product or some other product, Defendants have expressly limited their summary judgment motion to the Mojave Magic products. (See Def. Rep. Mem. at 2-3).

found in the Mojave Magic Total Endurance Lip Color Duo products . . . .” (Id. ¶ 16).

Defendants claim that the Mojave Magic products do not infringe because “the ‘cap’ and ‘base’ of the accused product are not ‘releasably’ or ‘removably’ coupled to each other.” (Def. Mem. in Supp. at 1).

### III. Legal Standards

#### A. Summary Judgment

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact is material if it “might affect the outcome of the suit under the governing law.” Holtz v. Rockefeller & Co., 258 F.3d 62, 69 (2d Cir. 2001) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). An issue of fact is genuine only if a jury could reasonably find in favor of the nonmoving party based on that fact. Id. The moving party bears the initial burden of establishing the absence of any genuine issue of material fact, after which the burden shifts to the nonmoving party to establish the existence of a factual question that must be resolved at trial. Anderson, 477 U.S. at 256-57. The trial court is required to construe the evidence in the light most favorable to the nonmoving party, and draw all reasonable inferences in its favor. Cifarelli v. Vill. of Babylon, 93 F.3d 47, 51 (2d Cir. 1996).

When a party moves for summary judgment of noninfringement, the Court must first determine the meaning and scope of the claims as a matter of law. Markman v. Westview Instruments, Inc., 52 F.3d 967, 976-79 (Fed. Cir. 1995), aff’d 517 U.S. 370, 376-84 (1996); see also EMI Group N. Am. v. Intel Corp., 157 F.3d 887, 891 (Fed. Cir. 1998) (“[A]ny disputed

questions concerning the meaning and scope of patent claims . . . are treated as questions of law.”) (citing Cybor Corp. v. FAS Techs., Inc., 138 F.3d 1448, 1455 (Fed. Cir. 1998) (en banc)). The Court may, but need not, conduct a so-called Markman hearing to assist with this analysis. Cias, Inc. V. Alliance Gaming Corp., 03-civ-3064, 2006 U.S. Dist. LEXIS 13610, at \*10 (S.D.N.Y., Mar. 29, 2006). After construing the claims, the Court must then compare the accused product to the construed claims to determine whether the product infringes. EMI Group, 157 F.3d at 891. Unlike claim construction, the comparison of the accused product to the construed claims is a question of fact. Id.

#### B. Claim Construction

“It is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the patentee is entitled the right to exclude.’” Phillips v. AWH Corp., 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc., 381 F.3d 1111, 1115 (Fed. Cir. 2004)). “[T]he words of a claim ‘are generally given their ordinary and customary meaning.’” Phillips, 415 F.3d at 1312 (quoting Vitronics Corp. V. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)); see also Ferguson Beauregard/Logic Controls, Div. of Dover Res., Inc. v. Mega Sys., LLC, 350 F.3d 1327, 1338 (Fed. Cir. 2003) (“In the absence of an express intent to impart a novel meaning to the claim term, the words take on the full breadth of the ordinary and customary meanings attributed to them by those of ordinary skill in the art.”) The ordinary and customary meaning of a claim term “is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” Phillips, 415 F.3d at 1312. “In some cases, the ordinary meaning of claim language as understood by a person

of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.” Phillips, 415 F.3d at 1314. However, in other cases, “the meaning of a claim term as understood by persons of skill in the art is often not immediately apparent, and because patentees frequently use terms idiosyncratically, the court looks to ‘those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean.’” Id. (quoting Innova, 381 F.3d at 1116). Such sources include “the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” Phillips, 415 F.3d at 1314 (internal citation and quotations omitted). The Federal Circuit has repeatedly stated that “the specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’” Id. at 1315 (quoting Vitronics, 90 F.3d at 1582); see also Semitool, Inc. v. Dynamic Micro Sys. Semiconductor Equip. GmbH, 444 F.3d 1337, 1347 (Fed. Cir. 2006); see also 35 U.S.C. § 112.

### C. Types of Infringement

35 U.S.C. § 271(a) states, inter alia, that “whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.” A plaintiff seeking to prove infringement must demonstrate “by a preponderance of the evidence that the accused device infringes one or more claims of the patent either literally or under the doctrine of equivalents.” Advanced Cardiovascular Sys. Inc. v. Scimed Life Sys. Inc., 261 F.3d 1329, 1336

(Fed. Cir. 2001) (citing WMS Gaming, Inc. v. Int'l Game Tech., 184 F.3d 1339, 1346 (Fed. Cir. 1999)). “Literal infringement requires that each and every limitation set forth in a claim appear in an accused product.” Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc., 424 F.3d 1293, 1310 (Fed. Cir. 2005) (quoting Frank’s Casing Crew & Rental Tools, Inc. v. Weatherford Int’l, Inc., 389 F.3d 1370, 1378 (Fed. Cir. 2004) (internal citation omitted)). “Infringement under the doctrine of equivalents requires that the accused product contain each limitation of the claim or its equivalent.” AquaTex Indus. v. Techniche Solutions, 419 F.3d 1374, 1382 (Fed. Cir. 2005) (citing Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17, 40 (1997)). This entitles “the patentee to claim those insubstantial alterations that were not captured in drafting the original patent claim but which could be created through trivial changes.” AquaTex Indus., 419 F.3d at 1382 (internal citations and quotations omitted). In application, “[a]n element in the accused product is equivalent to a claim limitation if the differences between the two are insubstantial. The analysis focuses on whether the element in the accused device ‘performs substantially the same function in substantially the same way to obtain the same result’ as the claim limitation.” AquaTex Indus., 419 F.3d at 1382 (quoting Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 339 U.S. 605, 608 (1950)).

#### IV. Application

##### A. Claim Construction

To resolve Defendants’ motion for partial summary judgment, I am required to construe the terms ‘releasably couple,’ (‘179 Patent, col. 6, l. 60), ‘removable coupling,’ (id., col. 8, l. 2),



and ‘releasably coupling.’ (*Id.*, col. 8, l. 16). (*See* Def. Mem. in Supp. at 10; Pl. Mem. in Opp. at 8).<sup>4</sup>

1. ‘Releasably Couple’

Claim 1 describes a “multi-purpose container” capable of “housing” two products at the same time. (‘179 Patent, col. 6, ll. 54-55, 62-64). The “first product” is housed in a container with “an open base . . . [with] an interior surface having a plurality of ribs . . . .” (*Id.*, 55-58). The “second product” is held in a receptacle with “an open neck adapted to releasably engage . . . [a] cap.” (*Id.*, ll. 62-64). The cap contains “an outer surface including a plurality of corresponding splines for engaging” the above-described “ribs” to “*releasably couple* said cap to said compartment and resist rotational movement of said cap within said base . . . .” (*Id.*, ll. 58-62) (emphasis added).

Defendant claims that the term ‘releasably couple’ means “‘easy and consistent removal and replacement’ of the two components . . . [and] does not contemplate removal or separation by means of extraordinary methods or tools . . . .” (Def. Mem. in Supp. at 12) (quoting, in part, ‘179 Patent, col. 3, ll. 63-64). Plaintiff does not specifically propose an alternative definition for ‘releasably couple,’ but argues that “the written disclosure does not disavow the use of force in the separation of the cap from the lipstick base, does not state how much force is necessary to separate the cap from the lipstick base, nor does it specify that the invention is useful only in the absence of force.” (Pl. Mem. in Opp. at 11). Thus, Plaintiff claims, “the patent does not express a manifest exclusion of the use of force in connection with the use of the invention, or a

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<sup>4</sup>Although the parties appear to view all three of these phrases as interchangeable, and each party has offered one argument in support of its interpretation of all three phrases, I will address each term separately.

restriction of use of the invention to only an absence of force.” (Id.).

As noted, “the words of a claim ‘are generally given their ordinary and customary meaning.’” Phillips, 415 F.3d at 1312 (quoting Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996)).<sup>5</sup> The ordinary and customary meaning of ‘releasably couple’ does not include the use of force or extraordinary methods or tools. Rather, ‘releasably couple’ contemplates the joining of two pieces in a manner that allows for their reasonable separation in the ordinary course. The claim’s use of the word ‘releasably’ to modify the word ‘couple’ confirms this interpretation. ‘Couple’ is defined by Webster’s Third New International Dictionary, Unabridged, as, inter alia, “to fasten together.” (Webster’s Third New International Dictionary, Unabridged, p. 521). By placing the word ‘releasably’ in front of, and thereby modifying the word ‘couple,’ the claim thus makes clear that the components “fasten together” in a non-permanent manner.

This construction is further supported by the specification. It is well established that “the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification.” Phillips, 415 F.3d at 1313.<sup>6</sup> In the instant case, the specification

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<sup>5</sup> While “[t]he patentee is free to act as his own lexicographer, and may set forth any special definitions of the claim terms in the patent specification or file history,” Schoenhaus v. Genesco, Inc., 440 F.3d 1354, 1358 (Fed. Cir. 2006), there is no indication anywhere in the specification or prosecution history that Plaintiff established a special definition for any of the disputed terms or phrases. (See generally Procaccini Decl., Exs. A and B).

<sup>6</sup> Plaintiff asserts that summary judgment is inappropriate because, inter alia, there exists a dispute as to whether the person of ordinary skill in the art is “the final consumer or user” or “some entity other than the final consumer or user . . . .” (Pl. Mem. in Opp. at 14). However, Defendants have stated that they “do not contest that a consumer is” the person of ordinary skill in the art. (Def. Rep. Mem. at 8). Furthermore, this is a case in which “the patent and the prior art were . . . so easily understandable, [that] a factual determination of the level of skill in the art [i]s unnecessary.” Chore-Time Equipment, Inc. v. Cumberland Corp., 713 F.2d 774, 779 (Fed. Cir. 1983); see also Gardiner v. Gendel, 727 F. Supp. 799, 803 (E.D.N.Y. 1989); AMP, Inc. v. Fujitsu Microelectronics, 853 F. Supp. 808, 815 (M.D. Pa. 1994).

specifically notes that the “cap is adapted to friction fit with [the] compartment to permit *easy and consistent removal and replacement* of receptacle when desired.” (‘179 Patent, col. 3, ll. 62-65) (emphasis added) (drawing numerals omitted). Likewise, the specification - and, indeed, the ‘179 Patent’s title - makes explicit reference to the ‘interchangeable’ nature of the components. (See, e.g., ‘179 Patent, col. 1, ll. 55-56, col. 3, ll. 43, 46-47). The ‘Background of the Invention’ further notes that “[w]hile it is generally known to provide a lipstick dispenser in combination with a container or dispenser of another product, the present invention has been developed to improve over such prior art containers by providing a lipstick dispenser that may mate with *one of a variety of interchangeable attachments*.” (*Id.*, col. 1, ll. 22-27) (emphasis added). The interchangeable nature of the attachments confirms that the components are intended to be separable without the use of force or extraordinary methods or tools.

I therefore construe the term ‘releasably couple,’ as used in claim 1 of the ‘179 Patent, to mean “to fasten the open base and cap in a manner that permits easy and consistent removal and replacement of receptacle when desired.”

## 2. ‘Removable Coupling’

Claim 19 describes a “multi-purpose cosmetic container” consisting of, *inter alia*, a compartment with an “open base” and a “cap having an outer surface . . . .” (‘179 Patent, col. 7, ll. 47-51). The interior surface of the open base and the outer surface of the cap are designed “to permit *removable coupling* of said cap with said compartment while resisting rotational movement of said cap within said base . . . .” (*Id.*, col. 8, ll. 2-4) (emphasis added). Defendants argue that ‘removable coupling’ contemplates the “‘easy and consistent removal and replacement’ of the two components . . . [and] does not contemplate removal or separation by

means of extraordinary methods or tools . . . .” (Def. Mem. in Supp. at 12) (quoting, in part, ‘179 Patent, col. 3, ll. 63-64). Plaintiff argues that a ‘removable coupling’ does not exclude separation via force. (Pl. Mem. in Opp. at 11).

The ordinary and customary meaning of ‘removable coupling’ does not contemplate forceful separation. Rather, as with ‘releasably couple,’ the phrase ‘removable coupling’ contemplates the joining of two pieces in a manner that allows for their reasonable separation in the ordinary course. As described above, the word ‘couple’ is defined as “to fasten together.” (Webster’s Third New International Dictionary, Unabridged, p. 521). A ‘coupling’ is defined as, inter alia, “a device that serves to couple or connect the ends of adjacent parts or objects.” (Id. at 522). The use of the word ‘removable’ to modify ‘coupling’ confirms that the two components are fastened in a non-permanent fashion, because a coupling on a lipstick container that cannot be separated without the use of force or extraordinary methods is not ‘removable.’

The phrase ‘removable coupling’ or variations thereof<sup>7</sup> appears numerous times throughout the specification and prosecution history. (See, e.g., ‘179 Patent, col. 1, ll. 42, 47, 51, 52, col. 3, l. 54, col. 4, ll. 9-10; Procaccini Decl., Ex. B, pp. 2, 6, 9, 10). There is no evidence of “an express intent to impart a novel meaning to the claim terms . . . .” Ferguson Beauregard/Logic Controls, Div. of Dover Res., Inc., 350 F.3d at 1338. Rather, each use of the phrase confirms that a ‘removable coupling’ is one that permits “‘easy and consistent removal and replacement’ of the two components . . . [and] does not contemplate removal or separation by means of extraordinary methods or tools . . . .” (Def. Mem. in Supp. at 12) (quoting, in part, ‘179 Patent,

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<sup>7</sup>The specification and prosecution history also use the phrase ‘removably couple.’ See, e.g., ‘179 Patent, col. 1, l. 42). My review of both the specification and prosecution history does not reveal any basis for treating these variations of the same expression differently.

col. 3, ll. 63-64). Furthermore, as discussed above, the ‘Background of the Invention’ specifically notes the ‘interchangeable nature’ of the components, and distinguishes the ‘179 Patent from prior art on the basis of this interchangeability. The ‘interchangeable’ nature of the components confirms that the use of force or extraordinary methods is not within the scope of a ‘removable coupling.’

I therefore construe the term ‘removable coupling,’ as used in claim 19 of the ‘179 Patent, to mean “a fastening between the open base and cap that allows for the easy and consistent removal and replacement of the cap when desired.”

### 3. ‘Releasably coupling’

Claim 21 describes a “multi-purpose container” comprised of, *inter alia*, a compartment with an open base and a cap with “an outer surface having a shape corresponding to . . . [a] preselected shape of . . . [the] interior surface of said open base for *releasably coupling* said cap to said compartment . . . .” (‘179 Patent, col. 8, ll. 10, 14-17) (emphasis added). Defendant argues that, as with the other disputed terms, ‘releasably coupling’ contemplates “‘easy and consistent removal and replacement’ of the two components . . . [and] does not contemplate removal or separation by means of extraordinary methods or tools . . . .” (Def. Mem. in Supp. at 12) (quoting, in part, ‘179 Patent, col. 3, ll. 63-64). Plaintiff again argues that separation by force is within the scope of the claim. (Pl. Mem. in Opp. at 11).

My review of the claims, the specification and the prosecution history reveals no basis for construing the ‘phrase ‘releasably coupling’ differently from the phrase ‘releasably couple,’ described in Section IV.A.1, *supra*. Accordingly, I construe ‘releasably coupling,’ as used in claim 21 of the ‘179 Patent, to mean “fastening the open base and cap in a manner that allows for

the easy and consistent removal and replacement of the cap when desired.”

## B. Infringement

Plaintiff claims that Defendants have infringed on the ‘179 Patent by “mak[ing], us[ing], offer[ing] to sell and sell[ing] . . . cosmetic container[s] with interchangeable attachments . . . .” (Cmplt. ¶14; see also id. ¶¶ 10-13). Defendant has moved for summary judgment of noninfringement under both literal infringement and the doctrine of equivalents but Plaintiff has responded to only the literal infringement portion of the motion. (See Pl. Mem. in Opp. at 15-21). According to Plaintiff, summary judgment on the literal infringement claim is improper because “the record fails to clearly identify: (i) which of Defendants’ accused devices are not infringing; (ii) whether Defendants’ manufacturing process produces devices that actually infringe the ‘179 [P]atent before they are released into the market to the final users; and (iii) where the infringement actually begins and where it ends.” (Id. at 15-16).

Plaintiff’s objections do not preclude partial summary judgment. As discussed in footnote three (3), *supra*, Defendant has expressly limited its motion to the Mojave Magic products. (See Def. Rep. Mem. at 2-3). Plaintiff’s second objection appears related to his claim that

[t]he Court needs to ascertain the process by which Defendants’ accused devices are actually manufactured, exactly because the Defendants knew about the patent way before the present suit was instituted, negotiated with [Plaintiff] for a license agreement, purposefully sabotaged the licensing negotiations, and modified the accused devices at least twice.

(Pl. Mem. in Opp. at 2) (internal citations omitted). The crux of this allegation is that Defendant knowingly and intentionally infringed upon the ‘179 Patent. However, intent is irrelevant to an infringement analysis. Embrex, Inc. v. Serv. Eng’g Corp., 216 F.3d 1343, 1353 (Fed. Cir. 2000)

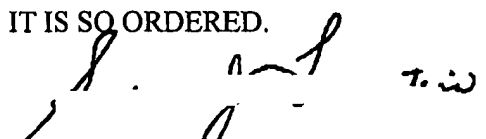
("[T]he Supreme Court and this court have recently reiterated that intent is irrelevant to infringement.) (citing, inter alia, Warner-Jenkinson Co., v. Hilton Davis Chem. Co., 520 U.S. 17, 34 (1997)); see also 35 U.S.C. § 271(a).

Plaintiff's final objection is that the Court must determine "where the infringement actually begins and where it ends." (Pl. Mem. in Opp. at 15-16). Defendants have submitted evidence that the "components of [the Mojave Magic products] are assembled in Asia with a powerful glue that causes the two components to be stuck together *in a permanent fashion*." Thus, when the Mojave products are sold in the United States, they cannot be disassembled by hand without unusual or extraordinary force or through the use of tools." (Schneider Decl. ¶ 3) (emphasis added). Plaintiff has failed to offer any evidence to the contrary. There exists no genuine issue of material fact regarding Defendants' noninfringement, and partial summary judgment of noninfringement under both literal infringement and the doctrine of equivalents is appropriate.

#### IV. Conclusion

For the reasons described above, Defendants' motion for partial summary judgment is GRANTED. The parties are directed to appear for a conference before the undersigned at the United States Courthouse in Central Islip, New York in Courtroom 1010 on July 19, 2006 at 11:00.

IT IS SO ORDERED.

  
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Sandra J. Feuerstein  
United States District Judge

Dated: June 22 2006  
Central Islip, New York